IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2709 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VRAJ COOPERATIVE HOUSING SOC LTD - Petitioner(s)
Versus
TOWN PLANNING OFFICER & 1 - Respondent(s)

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Appearance :
MR JIGAR RAVAL for Petitioner(s) : 1,
MS.NISHA PARIKH, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1,
MR JB PARDIWALA for Respondent(s) : 2

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/05/2007

ORAL JUDGMENT

1. Shri Jigar Raval, learned counsel for the petitioner; Ms. Nisha Parikh, learned AGP for the respondent no.1; Shri J.B.Pardiwala, learned

counsel for the respondent no.2.

2. The petitioner, a registered Cooperative Housing Society, is before this Court challenging the order passed by the Town Planning Officer as modified by the leaned Board, requiring the petitioner to pay development charges or the price difference at the rate of Rs. 82.50 ps. per sq.mt. According to the petitioner, the land was included in the Town Planning Scheme and after finalization of the Town Planning Scheme, the amount of difference was sought to be recovered from the petitioner-Society.

3. The petitioner says and submits that the principles governing the fixation of the amount of difference have not been taken into consideration either by the Town Planning Officer or by the Board therefor, that the land is on the outskirts of the township of Vadodara, it would not fetch higher price therefor and as no specific reasons have been given in the order passed by the Board for rejecting the claim of the petitioner, the orders passed by the Board and the Town Planning Officer deserve to be quashed.

4. Ms.Nisha Parikh, learned AGP and Shri Pardiwala, learned counsel for the respondents no. 1 and 2 respectively submit that the petitioner, in its writ application or at any other place, never submitted any calculations to show that what would be the difference in the charges. They submit that present is a case where the Court

has taken into consideration the totality of the circumstances, potentiality of the land and the likely use in future. They submit that the petitioner is not entitled to challenge the said order.

5. In case of acquisition, when the Land Acquisition Officer fixes the amount of compensation, then, he proceeds on the hypothesis that what would be the value of the land if it is sold in the open market, though neither there is real purchaser nor the owner of the land proposes to sell the land. In case like that, some guesswork is permissible, the Court would take into consideration the potentiality of the land, future use of the land and the price in the sale deed of the land, which is in the same vicinity. In such cases, even according to the Apex Court, guesswork is permissible. Even otherwise, it would be apt and appropriate to say that price of the land or any commodity would depend upon the principles of demand and supply. If somebody needs some property urgently, then, he is required to pay some more amount and if the seller is in need of the money, then, he may sell the property at a lower rate. Balance is required to be struck between these two and on that guesswork, value of the property is required to be fixed. Similarly, in case of development of the land in the Town Planning Scheme, Town Planning Officer is required to take into consideration

the expenses required to be incurred for development of the particular area and the future potentiality of the land. In the present case, undisputedly, the land was proposed to be used for house site. The petitioner is a Cooperative Housing Society, it has obtained certain permissions and had even deposited certain amounts with different departments. In case like present, neither there is purchaser nor there is seller. If that be so, the guesswork would again be permissible. On basis of the calculations, if the Town Planning Officer and/or the Board holds that the price difference, after the development could be at a particular price, then, in absence of cogent reasons and material provided by the petitioner, it would not be possible for this Court to enter into further guesswork without having any expertise on that side. In the opinion of this Court, the Board was absolutely justified in fixing the price at Rs. 82.50 ps. per sq.mt. and not at Rs. 60/- per sq.mt. as claimed by the petitioner.

6. The petition deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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